

EXHIBIT A

FY 19 Sales Regulation
SAMPLE REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS

THIS MODEL REGULATION INCORPORATES THE FOLLOWING:

1. The minimum standards required pursuant to the United States Food and Drug Administration on the sale and distribution of cigarettes;
2. M.G.L. Chapter 270, Sections 6 and 7 regarding sales to those under the minimum legal sales age and required signage;
3. The Massachusetts Attorney General's Regulations on sales and distribution of tobacco products, including e-cigarettes and childproof packaging of liquid nicotine containers; and
4. The Department of Energy and Environmental Affairs' regulation regarding hazardous waste disposal

INSTRUCTIONS FOR USE:

1. Fill in [city or town] name;
2. If measure is to be a by-law or an ordinance, (a) replace "regulation" with "by-law" or "ordinance"; (b) remove references to "board of health"; and (c) remove "Authority" section.
3. Fill in effective date;
4. If sections are removed, re-letter/re-number accordingly.

CHECKLIST FOR POLICY DECISIONS (circle decisions):

1. Expanded definition of tobacco products (w/nicotine delivery products)	YES	NO
2. Include cessation sign requirement (§D.2.b)	YES	NO
3. Include minimum cigar package size/price (§F)	YES	NO
4. No permit renewal if outstanding fines exist (§E.5)	YES	NO
5. No permit renewal if three sales to under MLSA (§E.8)	YES	NO
6. Cap and/or reduce number of permits (§E.9)	YES	NO
7. No sales within 500 feet of a school (§E.9.c)	YES	NO
8. No new permits within ____ feet of existing permit (§E.9.d)	YES	NO
9. Restrict flavored tobacco products (including menthol) (§G)	YES	NO
10. Blunt wraps (§H)	YES	NO
11. Ban free distribution of tobacco products & redemption of coupons (§I)	YES	NO
12. Ban out of package sales (§J)	YES	NO
13. Ban self-service displays (§K)	YES	NO
14. Ban vending machines (§L)	YES	NO (FDA/AG limits)
15. Ban Non-Residential RYO machines (§M)	YES	NO
16. Ban tobacco product sales in health care institutions (§N)	YES	NO
17. Ban tobacco product sales in educational institutions (§O)	YES	NO
18. Fining structure mirrors state law (§Q) OR FLAT FINE	100/200/300	300/300/300
19. Tolling periods for violations (§Q.1.b and c)	24 months	36 months
20. Suspension Period – Maintain or Double Lengths (§Q.1.b and c)	7/30 days	14/60 days
21. "Shall" vs. "May" language for suspensions (3 instances found in §§Q.1.b, Q.1.c. and Q.4)	SHALL	MAY

Regulation of the [city/town] Board of Health
Restricting the Sale of Tobacco Products

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin² and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,³ and that it is addiction to nicotine that keeps youth smoking past adolescence⁴;

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers "spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive" and that these companies were likely to continue targeting underage smokers⁵;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke⁶;

Whereas 18.1 percent of current smokers aged <18 years reported that they *usually* directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30 percent⁷;

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 – 17, which would improve health across the lifespan and save lives⁸;

Whereas cigars and cigarillos, can be sold in a single "dose," enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁹;

¹ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

³ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

⁴ *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

⁵ *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

⁶ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services (HHA).

⁷ CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014: 63 (No SS-04)). Retrieved from: www.cdc.gov.

⁸ IOM (Institute of Medicine) 2015. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington DC: The National Academies Press, 2015.

⁹ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%¹⁰;

Whereas 59% of high school smokers in Massachusetts have tried flavored cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17-year old's who smoked cigars reported smoking cigar brands that were flavored¹¹;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking¹²;

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹³ largely because these flavored products were marketed to youth and young adults,¹⁴ and younger smokers were more likely to have tried these products than older smokers¹⁵, neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction¹⁶;

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco-related death and disease is for local governments to ban categories of products from retail sale¹⁷;

¹⁰ Ringel, J., Wasserman, J., & Andreyeva, T. (2005). *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug; 32(3-4):161-70. Retrieved from: www.ncbi.nlm.gov/pubmed/21809109.

¹¹ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., *Tob Control*, March 2014; Preference for flavored cigar brands among youth, young adults and adults in the USA.

¹² U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530. www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹³ 21 U.S.C. § 387g.

¹⁴ Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601-1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244-251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211-212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁵ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁶ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁷ See fn. 3 at p. 85.

Whereas the U.S. Food and Drug Administration and the Tobacco Products Scientific Advisory Committee concluded that menthol flavored tobacco products increased nicotine dependence, decreased success in smoking cessation¹⁸;

Whereas menthol makes it easier for youth to initiate tobacco use¹⁹;

Whereas the U.S. Centers for Disease Control and Prevention has reported that the current use of electronic cigarettes, a product sold in dozens of flavors that appeal to youth, among middle and high school students tripled from 2013 to 2014²⁰;

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them²¹;

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an "acutely hazardous waste"²²;

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing "no nicotine" actually had low levels of nicotine present in all cartridges tested, except for one²³;

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days was 10.8% in 2013²⁴;

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes²⁵;

Whereas the sale of tobacco products is incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms; and

Whereas the Massachusetts Supreme Judicial Court has held that "... [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means"²⁶.

Now, therefore it is the intention of the [city/town] Board of Health to regulate the sale of tobacco products.

¹⁸ www.fda.gov/downloads/ucm361598.pdf, <https://tobacco.ucsf.edu/tpsac-gave-fda-what-it-needs-to-ban-menthol>

¹⁹ www.tobaccofreekids.org/assets/factsheet/0390.pdf

²⁰ Centers for Disease Control & Prevention. 2015. "Tobacco Use Among Middle and High School Students — United States, 2011–2014," *Morbidity and Mortality Weekly Report (MMWR)* 64(14): 381–385;

²¹ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS)

²² 310 CMR 30.136

²³ Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>.

²⁴ See fn. 7.

²⁵ King BA, Tynan MA, Dube SR, et al. 2013. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students." *Journal of Adolescent Health*. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

²⁶ *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).

B. Authority:

This regulation is promulgated pursuant to the authority granted to the [city/town] Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

Adult-Only Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose only purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, and in which the entry of persons under the minimum legal sales age is prohibited at all-times, and which maintains a valid permit for the retail sale of tobacco products as required by the [city/town] Board of Health.

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers regardless of any content.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco [the exemption for menthol, mint or wintergreen has been removed – BOH decision needed!], imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, [the flavors menthol, mint, and wintergreen have been added – BOH decision needed!] herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

Component Part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Coupon: Any card, paper, note, form, statement, ticket or other communication distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

Distinguishable: Perceivable by either the sense of smell or taste.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Flavored Tobacco Product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a Flavored Tobacco Product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services, and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices. [NOTE: If you have a BJ's Wholesale Club in your municipality, let us know.]

Liquid Nicotine Container: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

Listed or Non-Discounted Price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from employee or store personnel.

Schools: Public or private elementary or secondary schools.

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, "e-liquids" or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco Product" includes any component or part of a tobacco product. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products, as defined herein.

D. Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No person shall sell or provide a tobacco product, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in [city/town] is [21 or "in conformance with state law"].

2. Required Signage:

- a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the [city/town] Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health. The owner or other person in charge of a shop or other place used to sell hand rolled cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.05 (2) (e).
- b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the [city/town] Board of Health that discloses current referral information about smoking cessation.

3. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or the minimum legal sales age required by state law or older. Verification is required for any person under the age of 27.

4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the [CITY OR TOWN] of [city/town] without first obtaining a Tobacco Product Sales Permit issued annually by the [city/town] Board of Health. Only owners of establishments with a permanent, non-mobile location in [city/town] are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in [city/town].

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the [city/town] regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws about the sale of tobacco and this regulation.

3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.

4. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee shall be determined by the [city/town] Board of Health annually.

5. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

6. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

7. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.

8. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (§D.1) three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.

9. Maximum Number of Tobacco Product Sales Permits.

- a. At any given time, there shall be no more than [number (XX)] Tobacco Product Sales Permits issued in [city/town] (reduced by the number of permits not renewed pursuant to subsection (b) below)]. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits are either not renewed, revoked, or are returned to the Board of Health.
- b. As of [date], any permit not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the [city/town] Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph (a) shall be reduced by the number of the retired permits. [NOTE: If this subsection is included, remove the last sentence of section 9(a) AND add to the end of the first sentence of subsection (a) the following phrase: "...reduced by the number of permits not renewed pursuant to (b)."]]
- c. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line

from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.

- d. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.
- e. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the Current Permit Holder if the Applicant intends to sell tobacco products, as defined herein.

F. Cigar Sales Regulated:

- 1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and fifty cents (\$2.50) or more.
- 2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at five dollars (\$5.00) or more.
- 3. This Section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of [city/town].
- 4. The [city/town] Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

G. Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and adult-only retail tobacco stores.

H. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in [city/town].

I. Free Distribution and Coupon Redemption: No person shall:

- 1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
- 2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for

less than the listed or non-discounted price; or

3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

J. Out-of-Package Sales:

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000 and must provide the [city/town] Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
3. All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq."
4. No permit holder shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

K. Self-Service Displays:

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked. [Additional Compromise Language: The only self-service displays that are permissible pursuant to U.S. FDA and Massachusetts Attorney General regulations are displays that are located in Retail Tobacco Stores that ensure that no person younger than the MLSA is present, or permitted to enter, at any time.]

L. Vending Machines:

All vending machines containing tobacco products, as defined herein, are prohibited.

M. Non-Residential Roll-Your-Own Machines:

All Non-Residential Roll-Your-Own machines are prohibited.

N. Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No health care institution located in [city/town] shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

O. Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in [city/town] shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

P. Incorporation of State Laws and State Regulations:

1. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at M.G.L. Ch. 270, §§6, 6A, 7 and M.G.L. Ch. 112, §61A.
2. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 ("Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts") and 940 CMR 22.00 ("Sale and Distribution of Cigars in Massachusetts").

Q. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:
 - a. In the case of a first violation, a fine of one hundred dollars (\$100.00). [NOTE: Fines can be higher than these suggested fines; however, if a fine is over \$300, non-criminal disposition cannot be used as an enforcement tool.]
 - b. In the case of a second violation within [24, 36] months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco Product Sales Permit [shall/may] be suspended for seven (7) consecutive business days.
 - c. In the case of three or more violations within a [24, 36] month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit [shall/may] be suspended for thirty (30) consecutive business days.
 - d. In the case of four violations or repeated, egregious violations of this regulation, as determined by the Board of Health, within a [24, 36] month period, the Board of Health shall hold a hearing in accordance with subsection 4 of this section and may permanently revoke a Tobacco Product Sales Permit.

2. Failure to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple tobacco product sales permit suspensions shall not be served concurrently.

4. The [city/town] Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the [city/town] Board of Health [shall/may] suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

R. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D.

S. Separate Violations: Each day any violation exists shall be deemed to be a separate offense.

T. Enforcement:

Enforcement of this regulation shall be by the [city/town] Board of Health or its designated agent(s). Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the [city/town] Board of Health or its designated agent(s) and the Board shall investigate.

U. Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

V. Effective Date:

This regulation shall take effect on _____, 2019.

DRF

EXHIBIT B



PHONE: 508-602-7044
FAX: 508-790-6304

Town of Barnstable Board of Health

P.O. Box 534, Hyannis MA 02601

Paul J. Canniff, DMD
John Norman
Donald A. Guadagnoli, M.D.

May 29, 2019

LEGAL NOTICE

The Board of Health of the Town of Barnstable Massachusetts in accordance with and under the authority granted by Section 31 of Chapter 111 of the General Laws of the Commonwealth of Massachusetts, hereby announces that during the public hearing held on May 28, 2019, the Board voted unanimously to adopt amendments to Chapter 371 of the Town of Barnstable Code, Smoking.

The following Paragraph "G" is hereby added to Section 371-11 of the Town of Barnstable Code:

G. Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and adult-only retail tobacco stores.

The following two definitions are hereby added to Section 371-1 of the Town of Barnstable Code:

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco product or component thereof, including, but not limited to, tastes or aromas relating to fruit, chocolate, vanilla, honey, candy cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb or spice; provided however that no tobacco product shall be determined to have a characterizing flavor solely because of the provision ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product

Flavored Tobacco Product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a Flavored Tobacco Product.

These amendments to Chapter 371 of the Town of Barnstable Code go into effect on June 29, 2019. Copies of the amendments are available at the Public Health Division Office at 200 Main Street Hyannis, Massachusetts and will be posted online at www.townofbarnstable.us

Paul J. Canniff, D.M.D., Chairman
John Norman
Donald A. Guadagnoli, M.D.

TOWN OF BARNSTABLE
BOARD OF HEALTH

EXHIBIT C

CHAPTER 4 TOBACCO CONTROL

SECTION 1 RESTRICTING THE SALE OF TOBACCO PRODUCTS: PURPOSE

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat (Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm;

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were aged less than eighteen (18) years, 14.1% usually obtained their own cigarettes by buying them in a store (i.e., convenience store, supermarket, or discount store) or gas station (CDC (2009), *Youth Risk Behavior Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>);

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes (CDC Office of Smoking and Health, National *Youth Tobacco Survey, 2009*. Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in "Trends in Tobacco Use", ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf);

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin (CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/);

Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem;

Whereas many non-cigarette tobacco products, such as cigars and cigarillos can be sold in a single 'dose,' enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth (CDC (2009), *Youth Risk Behavior Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>);

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history (Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.)

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4% (Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. American Journal of Public Health, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug: 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109);

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes (National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>;

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit and high prices deter youth from starting. Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco (¹ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.) and (Chaloupka, F. J. & Lippman, P. D., NIH, NCI (2001). *The Impact of Price on Youth Tobacco Use, Smoking and Tobacco Control Monograph 14: Changing Adolescent Smoking Prevalence*) 193 – 200. Retrieved from: <http://dcccps.nih.gov/TCRB/monographs/>);

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) (TTB (2011). *Statistical Report – Tobacco* (2011) (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products are incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Now, therefore it is the intention of the Billerica Board of Health to regulate the sale of tobacco products.

SECTION 2 DEFINITIONS

For the purpose of this regulation, the following words shall have the following meanings:

4.2.001 BLUNT WRAP: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

4.2.002 BUSINESS AGENT: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

4.2.003 CHARACTERIZING FLAVOR: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

4.2.004 CIGAR: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

4.2.005 COMPONENT PART: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

4.2.006 CONSTITUENT: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

4.2.007 DISTINGUISHABLE: Perceivable by either the sense of smell or taste.

4.2.008 EDUCATIONAL INSTITUTION: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

4.2.009 ELECTRONIC CIGARETTE: Any electronic device composed of a mouthpiece, heating element, battery and /or electronic circuits that provides vapor of liquids, regardless of nicotine content, or relies on vaporization of any solid or liquid substance, regardless of nicotine content. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name. An electronic cigarette includes any component or part of an electronic cigarette, regardless of nicotine content, that rely on vaporization or aerosolization, including but not limited to, pods, vape juice containers and cartridges.

4.2.010 EMPLOYEE: Any individual who performs services for an employer.

4.2.011 EMPLOYER: Any individual, partnership, association, corporation, trust or other organized group of individuals, including Billerica or any agency thereof, which uses the services of one (1) or more employees.

4.2.012 ENCLOSED: A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

4.2.013 FLAVORED TOBACCO PRODUCT: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

4.2.014 HEALTH CARE INSTITUTION: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and subject to the

provisions of 247 CMR 6.00. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

4.2.015 MINIMUS LEGAL SALES AGE (MLSA): The age an individual must be before that individual can be sold a tobacco product in the Town of Billerica.

4.2.016 NON-RESIDENTIAL ROLL-YOUR-OWN (RYO) MACHINE: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

4.2.017 OUTDOOR SPACE: An outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

4.2.018 PERMIT HOLDER: Any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a tobacco product sales permit or any person who is required to apply for a tobacco product sales permit pursuant to these regulations, or his or her business agent.

4.2.019 PERSON: An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.

4.2.020 RETAIL TOBACCO STORE: An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Billerica Board of Health.

4.2.021 SELF SERVICE DISPLAY: Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

4.2.022 SMOKE CONSTITUENT: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

4.2.023 SMOKING (or smoke): The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

4.2.024 SMOKING BAR: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, Section 22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking Bar" shall include, but not be limited to, those

establishments that are commonly known as "cigar bars" and "hookah bars".

4.2.025 TOBACCO AND/OR TOBACCO PRODUCT: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

4.2.026 VENDING MACHINE: Any automated or mechanical self service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes, any other tobacco product.

SECTION 3 TOBACCO PRODUCT SALES TO PERSONS UNDER THE AGE OF 21 PROHIBITED

4.3.001 No person shall sell or provide a tobacco product, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in the Town of Billerica is 21.

4.3.002 REQUIRED SIGNAGE

4.3.002(1) In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Billerica Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.

4.3.002(2) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the Billerica Board of Health that discloses current referral information about smoking cessation.

4.3.002(3) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post a sign stating that "The sale of tobacco products to someone under 21 years of age is prohibited." The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating that "The use of e-cigarettes at indoor establishments may be prohibited by local law." The notices shall be no smaller than 8.5" by 11" and shall be posted conspicuously

in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. These notices shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

4.3.003 IDENTIFICATION: Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 40.

4.3.004 All retail sales of tobacco products must be face-to-face between the seller and the buyer (except for the purchase of tobacco from vending machines) and all retail sales of tobacco products must occur at the permitted location.

SECTION 4 TOBACCO PRODUCT SALES PERMIT

4.4.001 No person shall sell or otherwise distribute tobacco products at retail within Billerica without first obtaining a Tobacco Product Sales Permit issued annually by the Billerica Board of Health. Only owners of establishments with a permanent, non-mobile location in Billerica are eligible to apply for a permit and sell tobacco products at the specified location in Billerica.

4.4.002 As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Billerica Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

4.4.003 Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco Product Sales Permit can be issued.

4.4.004 The fee for a Tobacco Product Sales Permit shall be in accordance with the most current Board of Health fee schedule. All such permits shall be renewed annually by June 30th of every year.

4.4.005 A separate permit is required for each location where a retail establishment is selling tobacco products.

4.4.006 Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

4.4.007 No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products until such employee reads this regulation and federal and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.

4.4.008 A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

4.4.009 Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

4.4.010 Issuance and holding of a Tobacco Product Sales Permit shall be conditioned on an applicant's on-going compliance with current Massachusetts Department of Revenue requirements and policies including, but not limited to, minimum retail prices of tobacco products.

4.4.011 A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions.

4.4.012 Limiting Number of Tobacco Product Sales Permits Issued in the Town of Billerica. As of April 1, 2013, the Billerica Board of Health shall not issue a Tobacco Product Sales Permit to a first-time permit applicant with a new business. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his/her permit within 30 days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within 60 days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and failure to meet this deadline will result in the Buyer being treated as a first-time permit applicant.

4.4.13 A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises. Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

4.4.014 There shall be no more than three (3) Tobacco Sales Permits issued to Adult-Only Retail Tobacco Stores in Billerica as of July 1, 2019. No permit renewal by an Adult-Only Retail Tobacco Store will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New Adult-Only Retail Tobacco Store applicants for permits who are applying at a time when the maximum number of permits dedicated for Adult-Only Retail Tobacco Stores have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits to Retail Tobacco Stores are either not renewed, revoked, or are returned to the Board of Health. Applicants who purchase or acquire an existing Adult-Only Retail Tobacco Store that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the Current Permit Holder if the Applicant intends to operate as an Adult-Only Retail Tobacco Store, as defined herein.

SECTION 5 CIGAR SALES REGULATED:

4.5.001 No person shall sell or distribute or cause to be sold or distributed a single cigar.

4.5.002 No person shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.

4.5.003 This Section shall not apply to:

- a. The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
- b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Billerica.

SECTION 6 SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and retail tobacco stores.

SECTION 7 PROHIBITION OF THE SALE OF BLUNT WRAPS

No person or entity shall sell or distribute blunt wraps within Billerica.

SECTION 8 FREE DISTRIBUTION AND COUPON REDEMPTION

No person shall distribute, or cause to be distributed, any free samples of tobacco products. No means, instruments or devices that allow for the redemption of tobacco products for free or at a reduced price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permittee.

SECTION 9 OUT-OF-PACKAGE SALES

No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes. Pursuant to 940 CMR 21.04 (1) (b), no person shall break or otherwise open any tobacco product's package to sell or distribute any number of unpackaged or repackaged tobacco product that is smaller than the smallest package distributed by the manufacturer for individual consumer use. Pursuant to 940 CMR 21.05, no person shall sell or distribute nicotine in a liquid or gel substance in Billerica unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standards for special packaging as set forth in 15 U.S.C. §§ 1471 through 1476 and 16 CFR § 1700 et seq.

SECTION 10 SELF SERVICE DISPLAYS

4.10.001 All self-service displays of tobacco products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

4.10.001(a) EXEMPTION: Self-service displays that are located in facilities where the retailer ensures that no person younger than twenty-one (21) years of age is present, or permitted to enter, at any time.

SECTION 11 TOBACCO VENDING MACHINES

4.11.001 All tobacco product vending machines are prohibited.

4.11.001(a) EXEMPTION: Vending machines are permitted if equipped with a lock out device, in an establishment with a valid pouring liquor license, and located in facilities where the retailer ensures that no person younger than twenty-one (21) years of age is present, or permitted to enter, at any time. A lock-out device locks out sales from the vending machine unless a release mechanism is triggered by an employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to employees.

SECTION 12 NON-RESIDENTIAL ROLL-YOUR-OWN (RYO) MACHINES

All Non-Residential Roll-Your-Own (RYO) Machines are prohibited.

SECTION 13 LIMITING TOBACCO PRODUCT SALES PERMITS HELD BY HEALTH CARE INSTITUTIONS:

Only health care institutions in Billerica holding a valid tobacco sales permit as of January 1, 2013 shall be permitted to sell or cause to be sold tobacco products. For health care institutions only, a Tobacco and Nicotine Delivery Product Sales Permit is transferable for a new location. No person or entity purchasing a health care institution in Billerica is permitted to apply for a Tobacco Sales Permit, notwithstanding Section 4.4.012 of these regulations.

SECTION 14 PROHIBITION OF THE SALE OF TOBACCO PRODUCTS BY EDUCATIONAL INSTITUTIONS:

No educational institution located in Billerica shall sell or cause to be sold tobacco products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

SECTION 15 VIOLATIONS/ENFORCEMENT/PENALTIES

15.001 It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco products. The violator shall receive:

- a) In the case of a first violation, a fine of one hundred (100) dollars;
- b) In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred (200) dollars and the Tobacco Product Sales Permit may be suspended for seven (7) consecutive business days.
- c) In the case of three violations within a thirty-six (36) month period, a fine of three hundred (300) dollars and the Tobacco and Product Sales Permit may be suspended for thirty (30) consecutive business days.
- d) In the case of more than three violations within a thirty-six (36) month period, a fine of three hundred (300) dollars and the Tobacco Product Sales Permit may be revoked.

15.002 Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.

15.003 In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products directly to a consumer while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

15.004 The Billerica Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision, and the reasons therefore in writing. After a hearing, the Billerica Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

15.005 Non-Criminal Disposition: Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue. Each day any violation exists shall be deemed to be a separate offense.

15.006 Enforcement: Enforcement of this regulation shall be by the Billerica Board of Health or its designated agent(s). Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Billerica Board of Health or its designated agent(s) and the Board shall investigate.

SECTION 16 OTHER APPLICABLE LAWS

This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety and fire codes, regulations or statutes.

SECTION 17 PROHIBITING SMOKING IN WORKPLACES AND PUBLIC PLACES

17.001 The Board of Health adopts the Massachusetts Smoke-Free Workplace Law (Massachusetts General Law Chapter 270, Sections 21 and 22) by reference and any future revisions as a local regulation.

17.002 Pursuant to Massachusetts General Laws Chapter 270, Section 22 (j) smoking is also hereby prohibited in the following locations:

- a) retail tobacco stores
- b) smoking bars
- c) outdoor spaces of restaurants

17.003 The use of e-cigarettes is prohibited wherever smoking is prohibited per Massachusetts General Laws Chapter 270, Section 22 and Section 4.17.002 of this regulation.

SECTION 18 SALE OF ELECTRONIC CIGARETTES PROHIBITED:

No person shall sell or distribute or cause to be sold or distributed any electronic cigarettes, except in smoking bars and adult-only retail tobacco stores.

SECTION 19 THROUGH 21

Reserved for future regulations, amendments, etc.

SECTION 22 SEVERABILITY

22.001 If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

Effective Date:

Amendments concerning the definition of "Electronic Cigarette" in Section 2 and the restriction on the sale of electronic cigarettes in Section 18 were enacted by the Billerica Board of Health on March 4, 2019 and shall take effect on July 1, 2019.

EXHIBIT D

Regulation of the Framingham Board of Health Restricting the Sale of Tobacco Products

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin² and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,³ and that it is addiction to nicotine that keeps youth smoking past adolescence.⁴

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers "spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive" and that these companies were likely to continue targeting underage smokers⁵;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke;⁶

Whereas 18.1 percent of current smokers aged <18 years reported that they *usually* directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30 percent ;⁷

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 – 17, which would improve health across the lifespan and save lives⁸.

Whereas cigars and cigarillos, can be sold in a single "dose;" enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁹;

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%¹⁰;

¹ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

³ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

⁴ *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

⁵ *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

⁶ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services (HHA).

⁷ CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014; 63 (No SS-04)). Retrieved from: www.cdc.gov.

⁸ IOM (Institute of Medicine) 2015. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington DC: The National Academies Press, 2015.

⁹ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010; 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

Whereas 59% of high school smokers in Massachusetts have tried flavored cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year olds who smoked cigars reported smoking cigar brands that were flavored;¹¹

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;¹²

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹³ largely because these flavored products were marketed to youth and young adults,¹⁴ and younger smokers were more likely to have tried these products than older smokers¹⁵, neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;¹⁶

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco related death and disease is for local governments to ban categories of products from retail sale;¹⁷

Whereas the U.S. Centers for Disease Control and Prevention has reported that the current use of electronic cigarettes, a product sold in dozens of flavors that appeal to youth, among middle and high school students tripled from 2013 to 2014;¹⁸

¹⁰ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. American Journal of Public Health, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug; 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

¹¹ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., *Tob Control*, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.

¹² U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹³ 21 U.S.C. § 387g.

¹⁴ Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁵ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁶ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁷ See fn. 3 at p. 85.

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them;¹⁹

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an "acutely hazardous waste";²⁰

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one²¹;

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days is 10.8% in 2013;²²

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;²³

Whereas the sale of tobacco products is incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Whereas the Massachusetts Supreme Judicial Court has held that "... [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means"²⁴.

Now, therefore it is the intention of the Framingham Board of Health to regulate the sale of tobacco products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Framingham Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

¹⁸ Centers for Disease Control & Prevention. 2015. "Tobacco Use Among Middle and High School Students — United States, 2011–2014," *Morbidity and Mortality Weekly Report (MMWR)* 64(14): 381–385;

¹⁹ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS)
²⁰ 310 CMR 30.136

²¹ Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>.

²² See fn. 7.

²³ King BA, Tynan MA, Dube SR, et al. 2013. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students." *Journal of Adolescent Health*. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

²⁴ *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).

Adult-only retail tobacco store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products as required by the Framingham Board of Health.

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers regardless of any content.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Coupon: Any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

Distinguishable: Perceivable by either the sense of smell or taste.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the

manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Liquid Nicotine Container: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

Listed or non-discounted price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, "e-liquids" or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products, as defined herein.

D. Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Framingham is twenty-one (21).
2. Required Signage:
 - a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Framingham Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health. The owner or other person in charge of a shop or other place used to sell hand rolled cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.05 (2) (e).
 - b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Framingham Board of Health that discloses current referral information about smoking cessation.

- c. The owner or other person in charge of a shop or other place used to sell tobacco products that rely on vaporization or aerosolization, as defined herein as "tobacco products", at retail shall conspicuously post a sign stating that "The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.
3. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.
4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the City of Framingham without first obtaining a Tobacco Product Sales Permit issued annually by the Framingham Board of Health. Only owners of establishments with a permanent, non-mobile location in Framingham are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Framingham.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Framingham regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.
4. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee for which shall be determined by the Framingham Board of Health annually.
5. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

6. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
7. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
8. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (§D.1) three times within the previous twelve-months and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.
9. Maximum Number of Tobacco Product Sales Permits.
 - a. At any given time, there shall be no more than thirty (30) Tobacco Product Sales Permits issued in Framingham. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits are either not renewed, revoked, or are returned to the Board of Health.
 - b. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.
 - c. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.
 - d. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the Current Permit Holder if the Applicant intends to sell tobacco products, as defined herein.

F. Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and fifty cents (\$2.50) or more.
2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at five dollars (\$5.00) or more.

3. This Section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Framingham.
4. The Framingham Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

G. Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and adult-only retail tobacco stores.

H. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Framingham.

I. Free Distribution and Coupon Redemption: No person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.
4. Sections 2 and 3 shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

J. Out-of-Package Sales:

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

2. A retailer of Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Framingham Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
3. All retailers must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq."

K. Self-Service Displays:

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

L. Vending Machines:

All vending machines containing tobacco products, as defined herein, are prohibited.

M. Non-Residential Roll-Your-Own Machines:

All Non-Residential Roll-Your-Own machines are prohibited.

N. Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No health care institution located in Framingham shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

O. Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in Framingham shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

P. Incorporation of Attorney General Regulation 940 CMR 21.00:

The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 ("Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts").

Q. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation.

For a violation of Section D(1), the violator shall receive:

- a. In the case of a first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for three (3) consecutive business days..
- b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for fourteen (14) consecutive business days.
- c. In the case of three or more violations within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for sixty (60) consecutive business days.
- d. In the case of four violations or repeated, egregious violations of this regulation within a thirty-six (36) month period, the Board of Health shall hold a hearing in accordance with subsection 4 of this section and may permanently revoke a Tobacco Product Sales Permit.

For a violation of any Section except Section D(1), the violator shall receive:

- a. In the case of a first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit may be suspended for three (3) consecutive business days..
 - b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit may be suspended for fourteen (14) consecutive business days.
 - c. In the case of three or more violations within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit may be suspended for sixty (60) consecutive business days.
 - d. In the case of four violations or repeated, egregious violations of this regulation within a thirty-six (36) month period, the Board of Health shall hold a hearing in accordance with subsection 4 of this section and may permanently revoke a Tobacco Product Sales Permit.
2. Failure to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
 3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple tobacco product sales permit suspensions shall not be served concurrently.
 4. The Framingham Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Framingham Board

of Health may suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

R. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D.

S. Separate Violations:

Each day any violation exists shall be deemed to be a separate offense.

T. Enforcement:

Enforcement of this regulation shall be by the Framingham Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Framingham Board of Health or its designated agent(s) and the Board shall investigate.

U. Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

V. Effective Date:

This regulation shall take effect on July 1, 2018.

This regulation was approved by the Framingham Board of Health unanimously on February 12, 2018.

EXHIBIT E

Article 22A
Regulation of the Town of Sharon Board of Health
Restricting the Sale of Tobacco Products

Approved Changes June 12, 2019

300-22A.1 Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin² and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,³ and that it is addiction to nicotine that keeps youth smoking past adolescence.⁴

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers⁵;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke;⁶

Whereas 18.1 percent of current smokers aged <18 years reported that they *usually* directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30 percent ;⁷

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 – 17, which would improve health across the lifespan and save lives⁸.

Whereas cigars and cigarillos, can be sold in a single “dose”; enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁹;

¹ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgt/2010/.

³ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

⁴ *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

⁵ *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

⁶ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services (HHA).

⁷ CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014: 63 (No SS-04)). Retrieved from: www.cdc.gov.

⁸ IOM (Institute of Medicine) 2015. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington DC: The National Academies Press, 2015.

⁹ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%¹⁰;

Whereas 59% of high school smokers in Massachusetts have tried flavor cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year olds who smoked cigars reported smoking cigar brands that were flavored;¹¹

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;¹²

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹³ largely because these flavored products were marketed to youth and young adults,¹⁴ and younger smokers were more likely to have tried these products than older smokers¹⁵, neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;¹⁶

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco related death and disease is for local governments to ban categories of products from retail sale;¹⁷

¹⁰ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, *J. Prim. P.* 2011, Aug; 32(3-4):161-70. Retrieved from: www.ncbi.nlm.gov/pubmed/21809109.

¹¹ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., *Tob Control*, March 2014; Preference for flavored cigar brands among youth, young adults and adults in the USA.

¹² U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹³ 21 U.S.C. § 387g.

¹⁴ Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁵ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁶ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁷ See fn. 3 at p. 85.

Whereas the U.S. Centers for Disease Control and Prevention has reported that the current use of electronic cigarettes, a product sold in dozens of flavors that appeal to youth, among middle and high school students tripled from 2013 to 2014;¹⁸

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them;¹⁹

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an "acutely hazardous waste";²⁰

Whereas nonresidential Roll Your Own (RYO) machines enable loose, unpackaged tobacco to be poured into a machine and placed into empty, unpackaged cigarette tubes to be inhaled by individuals who smoke them. This procedure provides risk of contamination of the tobacco and unsanitary conditions in the machine and is injurious to public health;

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one²¹;

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days is 10.8% in 2013;²²

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;²³

Whereas the sale of tobacco products is incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Whereas the Massachusetts Supreme Judicial Court has held that "... [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means"²⁴.

Now, therefore it is the intention of the Sharon Board of Health to regulate the sale of tobacco products.

300-22A.2 Authority:

¹⁸ Centers for Disease Control & Prevention. 2015. "Tobacco Use Among Middle and High School Students — United States, 2011–2014," *Morbidity and Mortality Weekly Report (MMWR)* 64(14): 381–385;

¹⁹ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS)

²⁰ 310 CMR 30.136

²¹ Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>.

²² See fn. 7.

²³ King BA, Tynan MA, Dube SR, et al. 2013. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students." *Journal of Adolescent Health*. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

²⁴ *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).

This regulation is promulgated pursuant to the authority granted to the Sharon Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

300-22A.3 Incorporation of Attorney General Regulations 940 CMR 21.00 and 940 CMR 22.00:

The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 ("Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts") and the sale or distribution of cigars, as defined herein, must comply with those provisions found at 940 CMR 22.00 ("Sale and Distribution of Cigars in Massachusetts").

300-22A.4 Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

Adult-only retail tobacco store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Sharon Board of Health.

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers regardless of any content.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, ~~menthol, mint or wintergreen~~, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, mint, menthol and wintergreen, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Coupon: Any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

Distinguishable: Perceivable by either the sense of smell or taste.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Liquid Nicotine Container: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be open by the consumer or retailer.

Listed or non-discounted price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

Smoke Constituent: Any chemical or chemical compound in mainstream or side stream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, "e-liquids" or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products, as defined herein.

300-22A.5 Tobacco Product Sales Permit:

A. No person shall sell or otherwise distribute tobacco products, as defined herein, within the Town of Sharon without first obtaining a Tobacco Product Sales Permit issued annually by the Sharon Board of Health.

B. Only owners of establishments with a permanent, non-mobile location in Sharon are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Sharon.

C. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Sharon tobacco regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

D. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

E. The fee for a Tobacco Product Sales Permit shall be determined by the Sharon Board of Health annually.

F. A separate permit is required for each retail establishment selling tobacco products, as defined herein.

F. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

G. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

H. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

I. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.

J. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA three times within the previous permit year and the time period to appeal has expired.

K. Maximum Number of Tobacco Product Sales Permits.

L. At any given time, there shall be no more than four (4) Tobacco Product Sales Permits issued in Sharon. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits are either not renewed, revoked, or are returned to the Board of Health.

1. At any given time, of the allowed Permit number in subsection (1) above, there shall be no more than zero (0) Tobacco Product Sales Permits issued to Adult-Only Retail Tobacco Stores, per the definition in Sharon. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.

2. -A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.

2.3. New Retailers near Existing Retailers: A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.

3.4. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the Current Permit Holder if the Applicant intends to sell tobacco products, as defined herein.

300-22A.6 Required Signage:

- A. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Sharon Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health. The owner or other person in charge of a shop or other place used to sell hand rolled cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.06 (2) (e).
- B.
- C. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Sharon Board of Health that discloses current referral information about smoking cessation.
- D. The owner or other person in charge of a shop or other place used to sell tobacco products that rely on vaporization or aerosolization, as defined herein as "tobacco products", at retail shall conspicuously post a sign stating that "The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.
- E. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the

bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.

- F. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

300-22A.7 Prohibited Activities:

A. Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited:

No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Sharon is 21.

B. Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.
2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.
3. This Section shall not apply to:
 - a. The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
 - b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Sharon.
4. The Sharon Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

C. Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and adult-only retail tobacco stores.

D. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Sharon.

E. Free Distribution and Coupon Redemption:

1. No person shall distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. No person shall accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
3. No person shall sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.
4. Sections 2 and 3 shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

F. Out-of-Package Sales:

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. A retailer of Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Sharon Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
3. All retailers must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq."

G. Self-Service Displays:

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

H. Vending Machines:

All vending machines containing tobacco products, as defined herein, are prohibited.

I. Non-Residential Roll-Your-Own Machines:

All Non-Residential Roll-Your-Own machines are prohibited.

J. Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No health care institution located in Sharon shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

K. Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in Sharon shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

300-22A.8 Violations and Enforcement

A. Responsibility and compliance. It shall be the responsibility of the Establishment, permit holder and/or business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco products.

B. Non-criminal disposition:

1. Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in MGL c. 40, § 21D or by filing a criminal complaint at the appropriate venue.

2. Each day any violation exists shall be deemed a separate offense.

C. Fines: Any permit holder found to have violated these regulations shall receive:

1. In the case of a first violation, a fine of \$100;

2. In the case of a second violation within 24 months of the date of the current violation, a fine of \$200 and the Tobacco Product Sales Permit shall be suspended for seven consecutive business days;

3. In the case of three violations within a twenty-four-month period, a fine of \$300 and the Tobacco Product Sales Permit shall be suspended for 30 consecutive business days;

4. In the case of a fourth or subsequent violation occurring within a twenty-four-month period, a fine of \$300 shall be assessed and the Tobacco Product Sales Permit shall be suspended for 30 consecutive business days or revoked.

D. Cooperation with inspections: Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for 30 consecutive business days.

E. Sale of distribution during suspension or after revocation of permit: In addition to the monetary fines set above, any permit holder who engages in the sales or distribution of Tobacco Products directly to a consumer while his or her permit is suspended or revoked shall be subject to the suspension of all Board of Health issued permits for up to 30 consecutive business days and shall be subject to a fine of \$300 for each day a sale occurs.

F. Hearings: The Sharon Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which shall be no earlier than seven days after the date of said notice. The Permit Holder or its Business Agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. After a hearing, the Sharon Health Department shall suspend or revoke the Tobacco Product Sales Permit if the Board finds that a sale to a minor occurred or if multiple violations occurred as set forth above. For purposes for a suspension, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense.

G. Removal of products. If a permit is suspended, all Tobacco Products shall be removed from the retail Establishment or be placed in boxes that are sealed and moved out of the public area of the Establishment to a separate room that is accessible only to employees. All Tobacco Products shall be removed from the Establishment upon revocation of a Tobacco Product Sales Permit. Failure to remove all Tobacco Products shall constitute a separate violation of this regulation.

H. Enforcing authority and complaints.

1. Enforcement of this regulation shall be by the Board of Health of Sharon or its designated agents.

2. Any citizen who desired to register a complaint pursuant to the regulation may do so by contacting the Sharon Health Department and the complaint will be investigated.

I. Additional remedies: In addition to the remedies set forth above, the Board of Health may seek civil or criminal enforcement of these regulations in the appropriate Court of law.

300-22A.9. Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

300-22A.10. Effective Date:

This regulation shall take effect on December 31, 2019.

EXHIBIT F

Regulation of the Somerville Board of Health Restricting the Sale of Tobacco Products

A. Statement of Purpose:

Whereas conclusive evidence states that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritation to the eyes, nose, and throat¹;

Whereas, in 2009, among the 15.7% of students nationwide who smoked cigarettes during the 30 days prior to the survey and were less than 18 years old, 14.1% usually obtained them by buying them in a store (e.g. convenience store, supermarket, or discount store) or gas station²;

Whereas, in 2017, among the 8.7% of students nationwide who currently³ use electronic vapor products, 13.6% had usually gotten their own electronic vapor products by buying them in a store (e.g., convenience store, supermarket, discount store, gas station, or vape store)⁴;

Whereas the U.S. Department of Health and Human Services has concluded that cigarettes are addicting, similar to heroin and cocaine⁵, and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development⁶, may have lasting adverse consequences for brain development, and that it is addiction to nicotine that keeps youth smoking past adolescence⁷;

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers "spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive" and that these companies were likely to continue targeting underage smokers⁸;

Whereas 88% of all adult smokers begin smoking before the age of 18, and 99% started by age

¹ Centers for Disease Control and Prevention (CDC). "Smoking and Tobacco Use; Fact Sheet; Health Effects of Cigarette Smoking." Smoking and Tobacco Use, May 9, 2018.

http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/

² "Youth Risk Behavior Surveillance – United States, 2009." Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR) Surveillance Summaries, 59(No. SS-5) (June 4, 2010): 142. <https://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

³ Current use is defined as having used a tobacco product at least one time in the 30 days prior to the survey.

⁴ Kann, Laura, Tim McManus, William A Harris, et al. "Youth Risk Behavior Surveillance — United States, 2017." Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR), Surveillance Summaries 67(No. 8) (June 15, 2018): 479. <https://www.cdc.gov/healthyyouth/data/yrbps/pdf/2017-sa6708.pdf>

⁵ U.S. Department of Health and Human Services. "The Health Consequences of Smoking -- 50 Years of Progress: A Report of the Surgeon General." Atlanta, GA. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014: <https://www.surgeongeneral.gov/library/reports/50-years-of-progress-full-report.pdf>. Chapter 2, p. 30.

⁶ U.S. Department of Health and Human Services. "The Health Consequences of Smoking -- 50 Years of Progress: A Report of the Surgeon General." Chapter 13, p. 122.

⁷ U.S. Department of Health and Human Services. "The Health Consequences of Smoking -- 50 Years of Progress: A Report of the Surgeon General." Chapter 14, pp. 773-828.

⁸ United States v. Phillip Morris USA Inc., et al., No. 449 F. Supp. 2d 1 (D.D.C. 2006). at Paragraph 3301

26⁹;

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will reduce tobacco initiation, particularly among adolescents 15-17, and will improve health across the lifespan and save lives¹⁰;

Whereas flavored cigar dollar sales increased by 53% and unit sales increased by 39% between 2008 and 2011¹¹, and many non-cigarette tobacco products, such as cigars and cigarillos, which can be sold in a single "dose;" enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth¹²;

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited fruit, herb, or spice flavorings of cigarettes¹³, largely because these flavored products were marketed to youth and young adults^{14,15,16}, and younger smokers were more likely to have tried these products than older smokers¹⁷, and neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas flavoring agents increase the appeal of tobacco products to youth and tobacco use initiation and progression to tobacco dependence are more common with the use of the flavored products¹⁸;

Whereas the U.S. Surgeon General recognized that a complementary strategy to assist in eradicating tobacco related death and disease is for local governments to put greater restrictions

⁹ "Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General." Rockville, MD: U.S. Department of Health and Human Services, 2012.

<https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>. Chapter 1, p. 8.

¹⁰ Institute of Medicine. "Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products." *National Academies Press*, 2015. <https://doi.org/10.17226/18997>.

¹¹ Delnevo, Cristine D., Daniel P. Giovenco, Bridget K. Ambrose, Catherine G. Corey, and Kevin P. Conway. "Preference for Flavoured Cigar Brands among Youth, Young Adults and Adults in the USA." *Tobacco Control* 24 (2015): 389-94. <https://doi.org/10.1136/tobaccocontrol-2013-051408>.

¹² Farber, Harold J., Judith Groner, Susan Walley, and Kevin Nelson. "Protecting Children From Tobacco, Nicotine, and Tobacco Smoke." *Pediatrics, the Official Journal of the American Academy of Pediatrics* 136, no. 5 (November 2015): 998-1007. <https://doi.org/10.1542/peds.2015-3110>.

¹³ 21 U.S.C. § 387g

¹⁴ Carpenter, Carrie M., Geoffrey Ferris Wayne, John L. Pauly, Howard K. Koh, and Gregory N. Connolly. "New Cigarette Brands with Flavors That Appeal to Youth: Tobacco Marketing Strategies." *Health Affairs* 24, no. 6 (December 2005): 1601-10. <https://doi.org/10.1377/hlthaff.24.6.1601>.

¹⁵ Lewis, M. Jane, and Olivia Wackowski. "Dealing With an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands." *American Journal of Public Health* 96, no. 2 (February 2006): 244-51. <https://doi.org/10.2105/AJPH.2004.061200>.

¹⁶ "Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General." 2012. p. 537

¹⁷ Klein, Sarah M., Gary A. Giovino, Dianne C. Barker, Cindy Tworek, K. Michael Cummings, and Richard J. O'Connor. "Use of Flavored Cigarettes Among Older Adolescent and Adult Smokers: United States, 2004-2005." *Nicotine & Tobacco Research* 10, no. 7 (July 1, 2008): 1209-14. <https://doi.org/10.1080/14622200802163159>.

¹⁸ Farber, et al. "Protecting Children From Tobacco, Nicotine, and Tobacco Smoke."

on sales, including bans on entire categories of tobacco products¹⁹;

Whereas the U.S. Centers for Disease Control and Prevention has reported that current electronic cigarette use among middle and high school students tripled from 2013 to 2014²⁰;

Whereas, in 2017, electronic cigarettes (e-cigarettes) were the most commonly used tobacco product among high school (11.7%; 1.73 million) and middle school (3.3%; 0.39 million) students²¹;

Whereas nicotine solutions, which are consumed via electronic or battery-operated delivery smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum²²;

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an "acutely hazardous waste"²³;

Whereas in a lab analysis, electronic cigarette cartridges that were labeled as containing no nicotine still delivered some nicotine²⁴;

Whereas the U.S. Centers for Disease Control and Prevention has reported that current electronic cigarette use among middle school students increased from 0.6% in 2011 to 4.9% in 2018 and electronic cigarette use among high school students increased from 1.5% in 2011 to 20.8% in 2018²⁵;

Whereas electronic cigarettes have been shown to cause nicotine addiction in adolescents²⁶ and

¹⁹ U.S. Department of Health and Human Services. "The Health Consequences of Smoking -- 50 Years of Progress: A Report of the Surgeon General." Chapter 16, p. 872

²⁰ Arazola, René A., Tushar Singh, Catherine G. Corey, et al. "Tobacco Use Among Middle and High School Students — United States, 2011–2014." Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report (MMWR)* 64, no. 14 (April 17, 2015): 381–85. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4577954/>.

²¹ Wang, Teresa W., Andrea Gentzke, and Saida Sharapova. "Tobacco Product Use Among Middle and High School Students — United States, 2011–2017." Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report (MMWR)* 67 (2018): 629–633. <https://doi.org/10.15585/mmwr.mm6722a3>.

²² Fudala, Monica J. "E-Cigarettes: Are They Safe? An Update For Primary Care Physicians." *Illinois Academy of Family Physicians*, June 2017. <https://www.iafp.com/assets/Education/iafp%20e-cig%20article%208.2017.pdf>.

²³ Massachusetts Department of Environmental Protection, 310 CMR 30.136

²⁴ Hadwiger, Michael E., Michael L. Trehy, Wei Ye, Terry Moore, James Allgire, and Benjamin Westenberger. "Identification of Amino-Tadalafil and Rimonabant in Electronic Cigarette Products Using High Pressure Liquid Chromatography with Diode Array and Tandem Mass Spectrometric Detection." *Journal of Chromatography* 1217, no. 48 (November 26, 2010): 7547–55. <https://doi.org/10.1016/j.chroma.2010.10.018>.

²⁵ Cullen, Karen A., Bridget Ambrose, Andrea S. Gentzke, et al. "Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011–2018." Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report (MMWR)* 67, no. 45 (November 16, 2018): 1276–77. <https://doi.org/10.15585/mmwr.mm6745a5>.

²⁶ Case, Kathleen R., Dale S. Mantey, Melissa R. Creamer, et al. "E-Cigarette-Specific Symptoms of Nicotine Dependence among Texas Adolescents." *Addictive Behaviors* 84 (September 2018): 57–61. <https://doi.org/10.1016/j.addbeh.2018.07.032>.

create more combustible cigarette and tobacco product users^{27,28};

Whereas more than 8 out of 10 teen e-cigarette users (ages 12-17) report using products flavored to taste like menthol, alcohol, candy, fruit, chocolate, or other sweets²⁹;

Whereas the most commonly cited reasons for using e-cigarettes among both youth and young adults are curiosity, flavoring/taste, and low perceived harm compared to other tobacco products, while use of e-cigarettes as an aid to quit conventional cigarettes is not reported as a primary reason for use among youth and young adults³⁰;

Whereas flavored, including menthol, tobacco product use is highest among those 12-17 years old and lowest among those older than 65 years old³¹;

Whereas in 2017-2018, current use of menthol- or mint-flavored e-cigarettes among high-school students increased from 42.3% to 51.2%, and from 21.4% to 38.1% among exclusive e-cigarette users³²;

Whereas research indicates youth who first tried a flavored tobacco product are more likely to become current tobacco users than those who first tried a non-flavored product³³;

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days is 10.8% in 2013³⁴;

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes³⁵;

²⁷ Dunbar, Michael S., Jordan P. Davis, Anthony Rodriguez, et al. "Disentangling Within- and Between-Person Effects of Shared Risk Factors on E-Cigarette and Cigarette Use Trajectories From Late Adolescence to Young Adulthood." *Nicotine & Tobacco Research: Official Journal of the Society for Research on Nicotine and Tobacco*, October 2, 2018. <https://doi.org/10.1093/ntr/nty179>.

²⁸ Bold, Krysten W., Grace Kong, Deepa R. Camenga, et al. "Trajectories of E-Cigarette and Conventional Cigarette Use Among Youth." *Pediatrics* 141, no. 1 (January 1, 2018): e20171832. <https://doi.org/10.1542/peds.2017-1832>.

²⁹ Centers for Disease Control and Prevention (CDC). "E-Cigarettes and Young People." Centers for Disease Control and Prevention, January 31, 2017. <https://www.cdc.gov/features/ecigarettes-young-people/index.html>.

³⁰ "E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General." Rockville, MD: U.S. Department of Health and Human Services, 2016. https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf.

³¹ Villanti, Andrea C., Amanda L. Johnson, Bridget K. Ambrose, K. et al. "Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014)." *American Journal of Preventive Medicine* 53, no. 2 (August 2017): 139-51. <https://doi.org/10.1016/j.amepre.2017.01.026>.

³² Cullen, et al. "Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011-2018."

³³ Villanti, et al. "Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014)."

³⁴ "Youth Risk Behavior Surveillance — United States, 2013." Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report (MMWR), Surveillance Summaries* 63, no. 4 (June 13, 2014). <https://www.cdc.gov/mmwr/pdf/ss/ss6304.pdf>.

³⁵ King, Brian A., Michael A. Tynan, Shanta R. Dube, and Rene Arrazola. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students." *Journal of Adolescent Health* 54, no. 1 (January 2014): 40-46. <https://doi.org/10.1016/j.jadohealth.2013.07.033>.

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%³⁶;

Whereas the sale of tobacco products is incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Whereas the Massachusetts Supreme Judicial Court has held that "... [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means"³⁷.

Now, therefore it is the intention of the Somerville Board of Health to regulate the sale of tobacco products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Somerville Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations."

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

³⁶ Ringel, Jeanne S., Jeffrey Wasserman, and Tatiana Andreyeva. "Effects of Public Policy on Adolescents' Cigar Use: Evidence From the National Youth Tobacco Survey." *American Journal of Public Health* 95, no. 6 (June 1, 2005): 995-98. <https://doi.org/10.2105/AJPH.2003.030411>.

³⁷ Druzik et al v. Board of Health of Haverhill, 324 Mass. 129 (1949).

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, menthol, mint, wintergreen, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Component Part: Any element of a tobacco product, including, but not limited to, the tobacco, filter, and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Coupon: Any card, paper, note, form, statement, ticket, or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service, or accommodation without charge or at a discount price.

Distinguishable: Perceivable by either the sense of smell or taste.

E-Cigarette: Any electronic device composed of a mouthpiece, heating element, battery and/or electronic circuits that relies on vaporization or aerosolization. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, e-hookah or under any other product name. "E-Cigarette" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Educational Institution: Any public or private college, school, professional school, scientific, or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust, or other organized group of individuals that uses the services of one (1) or more employees.

Flavored Tobacco Product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

"Tobacco" flavor shall be considered a Characterizing Flavor for any product that relies on vaporization or aerosolization.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Liquid Nicotine Container: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be open by the consumer or retailer.

Listed or Non-Discounted Price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars, or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.

Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Somerville Board of Health.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products, as defined herein.

D. Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Somerville is twenty-one (21).

2. Required Signage

a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Somerville Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.

b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Somerville Board of Health that discloses current referral information about smoking cessation.

c. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post a sign stating that "The sale of tobacco products, including e- cigarettes, to someone under the minimum legal sales age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

3. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.

4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the City of Somerville without first obtaining a Tobacco Product Sales Permit issued annually by the Somerville Board of Health. Only owners of establishments with a permanent, non-mobile location in Somerville are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Somerville.

2. As part of the Tobacco Product Sales Permit application process, the applicant will be

provided with the Somerville regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state, and local laws regarding the sale of tobacco and this regulation.

3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

4. The fee for a Tobacco Product Sales Permit shall be determined by the Somerville Board of Health annually.

5. A separate permit is required for each retail establishment selling tobacco products, as defined herein.

6. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

7. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

8. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

9. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.

10. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises. Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business must apply within sixty (60) days of such sale for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

11. A Retail Store may sell (1) tobacco-flavored tobacco products such as cigarettes, cigars, chew tobacco, spit tobacco and any product that contains parts of leaves and/or stems of a tobacco plant and (2) unflavored solutions that are designed to be vaporized or aerosolized.

12. A Retail Tobacco Store or Smoking Bar may sell all types of unflavored and flavored tobacco products as well as unflavored and flavored solutions designed to be vaporized or

aerosolized.

F. Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.
2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more
3. This Section shall not apply to:
 - a. The sale or distribution of any single cigar having a retail price of two dollar and fifty cents (\$2.50) or
 - b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the City of Somerville.
4. The Somerville Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

G. Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and retail tobacco stores.

H. Sale of E-Cigarettes Restricted:

No person shall sell or distribute or cause to be sold or distributed any E-Cigarette, as defined herein, except in Smoking Bars and Retail Tobacco Stores.

I. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Somerville.

J. Free Distribution and Coupon Redemption:

No person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein.
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or

redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or

3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy- two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

4. Sections 2 and 3 shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

K. Out-of-Package Sales:

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

2. A retailer of Liquid Nicotine Containers, where liquid nicotine is an "acutely hazardous waste" as identified in 310 CMR 30.136, must comply with the provisions of 310 CMR 30.000, and must provide the Somerville Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.

3. The sale or distribution of e-cigarettes, as defined herein, must comply with those provisions found at 940 CMR 21.00 ("Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts").

4. All retailers must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S.C. §§1471 through 1476 and 16 CFR §1700 et seq."

L. Self-Service Displays:

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

M. Vending Machines:

All vending machines containing tobacco products, as defined herein are prohibited.

N. Non-Residential Roll-Your-Own Machines:

All Non-Residential Roll-Your-Own machines are prohibited.

O. Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No health care institution located in Somerville shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

P. Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in Somerville shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

Q. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:

a. In the case of a first violation, a fine of three hundred dollars (\$300.00).

b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.

c. In the case of three or more violations within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

d. In the case of four violations or repeated, egregious violations of this regulation within a thirty-six (36) month period, the Board of Health shall hold a hearing in accordance with §P.4 and may permanently revoke a Tobacco Product Sales Permit.

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for a minimum of thirty (30) consecutive business days.

4. The Somerville Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefore and

establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Somerville Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

R. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

S. Separate Violations:

Each day any violation exists shall be deemed to be a separate offense

T. Enforcement:

Enforcement of this regulation shall be by the Somerville Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Somerville Board of Health or its designated agent(s) and the Board shall investigate.

U. Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

V. Effective Date:

This proposed regulation shall take effect on April 1, 2019.




1. 
2. 
3. 

EXHIBIT G

**Regulation of the Walpole Board of Health
Restricting the Sale of Tobacco Products**

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat;

Whereas, in 2017, among the 8.7% of students nationwide who currently use electronic vapor products, 13.6% had usually gotten their own electronic vapor products by buying them in a store (e.g., convenience store, supermarket, discount store, gas station, or vape store) ;

Whereas the U.S. General Vice Admiral Jerome M. Adams has noted that youth use of e-cigarettes has reached epidemic proportions and that the U.S. Secretary of Health and Human Services Alex Azar stated that the sharp rate of increased use of e-cigarettes is unmatched among any other substance;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development, and that it is addiction to nicotine that keeps youth smoking past adolescence.

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers "spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive" and that these companies were likely to continue targeting underage smokers;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke;

Whereas 18.1 percent of current smokers aged <18 years reported that they usually directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30 percent ;

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 – 17, which would improve health across the lifespan and save lives.

Whereas flavored cigar dollar sales increased by 53% and unit sales increased by 39% between 2008 and 2011 , and many non-cigarette tobacco products, such as cigars and cigarillos,, can be sold in a single "dose," enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth ;

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%;

Whereas 59% of high school smokers in Massachusetts have tried flavor cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year olds who smoked cigars reported smoking cigar brands that were flavored;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes, largely because these flavored products were marketed to youth and young adults, and younger smokers were more likely to have tried these products than older smokers , neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas flavoring agents increase the appeal of tobacco products to youth and tobacco use initiation and progression to tobacco dependence are more common with the use of the flavored products;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco related death and disease is for local governments to ban categories of products from retail sale;

Whereas the U.S. Centers for Disease Control and Prevention has reported that the current use of electronic cigarettes, a product sold in dozens of flavors that appeal to youth, among middle and high school students tripled from 2013 to 2014;

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them and in Needham 17% of Needham high school students currently use e-cigarettes and 29% of those students have tried e-cigarettes once in their lifetime, according to the 2014 Metro West Adolescent Health Survey (MHAWS).

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”;

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one ;

Whereas the U.S. Centers for Disease Control and Prevention has reported that current electronic cigarette use among middle school students increased from 0.6% in 2011 to 4.9% in 2018 and electronic cigarette use among high school students increased from 1.5% in 2011 to 20.8% in 2018 ;

Whereas electronic cigarettes have been shown to cause nicotine addiction in adolescents and create more combustible cigarette and tobacco product users,

Whereas more than 8 out of 10 teen e-cigarette users (ages 12-17) report using products flavored to taste like menthol, alcohol, candy, fruit, chocolate, or other sweets ;

Whereas the most commonly cited reasons for using e-cigarettes among both youth and young adults are curiosity, flavoring/taste, and low perceived harm compared to other tobacco products, while use of e-cigarettes as an aid to quit conventional cigarettes is not reported as a primary reason for use among youth and young adults ;

Whereas flavored, including menthol, tobacco product use is highest among those 12-17 years old and lowest among those older than 65 years old;

Whereas in 2017-2018, current use of menthol- or mint-flavored e-cigarettes among high-school students increased from 42.3% to 51.2%, and from 21.4% to 38.1% among exclusive e-cigarette users ;

Whereas research indicates youth who first tried a flavored tobacco product are more likely to become current tobacco users than those who first tried a non-flavored product;

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days is 10.8% in 2013;

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;

Whereas the sale of tobacco products is incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Whereas the Massachusetts Supreme Judicial Court has held that "... [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means".

Now, therefore it is the intention of the Walpole Board of Health to regulate the sale of tobacco products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Walpole Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint or wintergreen, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Distinguishable: Perceivable by either the sense of smell or taste.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Walpole Board of Health.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

- c. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post a sign stating that "The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

3. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.

4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the Town of Walpole without first obtaining a Tobacco Product Sales Permit issued annually by the Walpole Board of Health. Only owners of establishments with a permanent, non-mobile location in Walpole are eligible to apply for a permit and sell tobacco products at the specified location in Walpole.

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Walpole regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

4. The fee for a Tobacco Product Sales Permit shall be determined by the Walpole Board of Health annually.

5. A separate permit is required for each retail establishment selling tobacco products, as defined herein.

6. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

7. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products, as defined herein, until such employee reads this regulation and federal and state laws regarding the sale of tobacco products and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.

8. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

9. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

10. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions.

11. Maximum Number of Tobacco Product Sales Permits.

a. At any given time, there shall be no more than twenty-three (23) Tobacco Product Sales Permits of which included is a maximum of two (2) that are for a Retail Tobacco Store, issued in Walpole (reduced by the number of permits not renewed pursuant to subsection (b) below). No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.

b. As of May 30, 2019 any permit not renewed because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, or because the ownership of the establishment with the Tobacco Product Sales Permit changes ownership, shall be returned to the Walpole Board of Health and may, at the Board's discretion, be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph 11(a) shall be reduced by the number of the retired permits.

c. Applicants who purchase an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale of said business must apply within sixty (60) days of such sale for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein, and permit issuance shall be subject to the conditions of this Section.

12. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises. Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

F. Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.

2. No person shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.

3. This Section shall not apply to:

a. The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.

- b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the Town of Walpole.

4. The Walpole Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

G. Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and retail tobacco stores.

H. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Walpole.

I. Free Distribution and Coupon Redemption:

No person shall distribute, or cause to be distributed, any free samples of tobacco products, as defined herein. No means, instruments or devices that allow for the redemption of any tobacco products, as defined herein, for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

J. Out-of-Package Sales:

The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

K. Self-Service Displays:

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

L. Vending Machines:

All vending machines containing tobacco products, as defined herein, are prohibited.

M. Non-Residential Roll-Your-Own Machines:

All Non-Residential Roll-Your-Own machines are prohibited.

N. Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No health care institution located in the Town of Walpole shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

O. Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in the Town of Walpole shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

P. Incorporation of Attorney General Regulation 940 CMR 21.00:

The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 ("Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts").

Q. Smoking Bars

Smoking Bars are prohibited in the Town of Walpole.

R. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:

- a. In the case of a first violation, a fine of two hundred dollars (\$200.00).
- b. In the case of a second violation within 36 (thirty-six) months of the date of the current violation, a fine of three hundred dollars (\$300.00).
- c. In the case of three or more violations within a 36 (thirty-six) month period, a fine of three hundred dollars (\$300.00).

2. In addition to the above penalties, for any violation that involve the sales of any tobacco products, as defined in these regulations, to anyone under the age of 21, shall include a mandatory appearance by the tobacco permit holder before the Walpole Board of health and a written preventive action to ensure that tobacco products will not be sold again to anyone under the age of 21 AND also

- a. In the case of a first violation, within a 36 month period, a suspension of selling tobacco products for two days.
- b. In the case of a second offense, within a 36 month period, a suspension of selling tobacco products for four days.
- c. In the case of a thirds offense, within a 36 month period, a suspension of selling tobacco products for seven days.
- d. Subsequent offenses during a 36 month period will be determined at a hearing of the Walpole Board of Health.
- e. The suspension dates for selling cigarettes to minors will be at the discretion of the Walpole Board of Health and are not necessarily consecutive. The store shall post an appropriate sign visible to customers that tobacco sales have been suspended per order of the Walpole Board of Health.
- f. Notwithstanding any specific penalties listed above the Board of Health at all times may consider the revocation of the permit to sell tobacco after a hearing and opportunity to be heard. All penalties shall be applied to the holder of the retail tobacco registration, where such registration exists, or to the person violating any regulation, where a tobacco registration is not required.

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

4. The Walpole Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Walpole Board of Health may suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

S. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

T. Enforcement:

Enforcement of this regulation shall be by the Walpole Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Walpole Board of Health or its designated agent(s) and the Board shall investigate.

U. Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

V. Effective Date:

This regulation shall take effect on August 1, 2019

1. _____
2. _____
3. _____